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SPECIFICATIONS No 2015/MARKET/PRICE SQUEEZE

**GENERAL CALL FOR TENDERS WITH EUROPEAN PUBLICITY FOR THE ACCOUNT
OF THE BELGIAN INSTITUTE FOR POSTAL SERVICES AND
TELECOMMUNICATIONS (BIPT) REGARDING THE DESIGNATION OF A BODY
TASKED WITH THE DEVELOPMENT OF A PRICE SQUEEZE TESTING TOOL**

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A. General Provisions

1. Derogation

In accordance with Article 18 of the Royal Decree of 14 January 2013 laying down general implementing rules of government contracts and of public works concessions, the contractor and his employees are bound by a duty of secrecy regarding the information of which they are aware when carrying out this contract.

Contrary to Article 19, § 1, of the aforementioned Royal Decree of 14 January 2013, the contracting authority may acquire intellectual property rights created, developed or used within the context of the execution of this contract.

2. Object and nature of the contract

This contract regards the designation of a body tasked with the development of a price squeeze testing tool for BIPT.

This contract consists of a single lot.

To this end, the procedure of an open call for tenders with European publicity is chosen, in accordance with Article 25 of the Act of 15 June 2006 on public procurement.

No variations are allowed.

This is a contract based on a fixed overall price (R.D. of 15 July 2011, Art. 2 and 13).

3. Contract duration

The contract commences on the first calendar day following the day when the contractor has received the notice of the contract conclusion, and ends according to the deadlines laid down in Annex A – Description of the services.

4. Contracting authority – Additional information

The contracting authority is the Belgian Institute for Postal Services and Telecommunications (BIPT), represented by Mr Luc Vanfleteren, Member of the Council, mandated by the Council.

Extra information concerning the procedure is available from Mr Vincent Hanchir (Fr), Senior Advisor, whose contact details are mentioned on the flyleaf of these specifications.

5. Right to submit and opening of tenders

5.1. Right to submit and procedure to submit tenders

As variations are not allowed, tenderers may each submit only one tender for this contract.

As the contracting authority does not accept the electronic submission of tenders, tenders shall only be submitted as follows:

- 1) either by letter (a registered letter being recommended) sent to the contracting authority,
- 2) or delivered personally to the contracting authority against a receipt.

Tenders shall be placed in a sealed envelope.

This envelope shall bear the following inscriptions:

- the number of the specifications 2015/MARKET/PRICE SQUEEZE as well as the time and hour of the session for opening the tenders.

That envelope is inserted into a second envelope bearing the following inscriptions:

- the word "tender" in the left upper corner;
- the number of the specifications 2015/MARKET/PRICE SQUEEZE;
- the address of the addressee as stated below.

The tenders are sent by mail or deposited in person to:

Belgian Institute for postal services and telecommunications (BIPT)
For the attention of Mr Vincent Hanchir
Ellipse building
Boulevard du Roi Albert II 35
1030 Brussels

They are submitted in 1 original copy and must be drawn up according to the tendering form annexed to these specifications.

If the tenders are deposited in person, the tenderer is entitled to ask for a receipt.

5.2 Opening of the tenders

The session for opening the tenders will take place in the offices of the contracting authority on 21 May 2015 at 2pm.

All tenders shall reach the chairman of the session before he opens the session. Only the tenders that reach the chairman of the session before he opens the session are admissible.

However, a late tender is admissible provided that the contracting authority has not concluded the contract yet and the tender was sent by registered mail no later than four calendar days before the day of the opening session.

6. Directing service - directing officer

The directing service is the contracting authority. Only the contracting authority is authorised to monitor and supervise the contract.

The directing officer (who will be an officer of the contracting authority) will be designated in the contract award notice. The limits of his competence will be indicated.

7. Description of the services to be provided

A more detailed description of the services to be provided can be found in Annex A to these specifications.

8. Documents applicable to the service tendered for

8.1. Legislation

- The Act of 15 June 2006 on government contracts and certain works contracts, supply contracts and service contracts;
- The Act of 17 June 2013 on motivation, information and appeals concerning government contracts and certain works contracts, supply contracts and service contracts;
- The Royal Decree of 15 July 2011 on awarding public procurement contracts in classical sectors;
- The Royal Decree of 14 January 2013 laying down general implementing rules of government contracts and of public works concessions;
- The Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors.
- Any amendments to the Act and aforementioned Decrees that apply on the day of publication of the announcement of the contract in the "Bulletin des Adjudications".

8.2. Contract documents

- These specifications No 2015/MARKET/PRICE SQUEEZE and the tendering form annexed.
- The approved tender of the contractor.

9. Tenders

9.1. Information to be given in the tender

The tenderers' attention is drawn to Article 8 of the Act of 15 June 2006 and to Article 64 of the Royal Decree of 15 July 2011 regarding incompatibilities.

The tenderer is urgently requested to use the tendering form annexed. In this respect, the tenderer's attention is drawn to Article 80 of the Royal Decree of 15 July 2011, which lays down that: "When the contract documents include a form for drawing up the tender and filling out the summary survey or

the inventory, the tenderer shall use it. If he does not, he shall bear the full responsibility for the complete conformity of the documents he has used with the form."

The tender and annexes to the tendering form shall be drawn up in French or in Dutch.

By submitting a tender, tenderers shall automatically renounce their general or specific terms and conditions of sale, even if these are included in an annex to the tender.

Tenderers shall clearly state in their tenders which information is confidential and/or relates to technical or trade secrets and may therefore not be disclosed by the contracting authority.

The tendering form annexed to the specifications shall be presented in the preamble of the tender.

In accordance with Article 88 of the aforementioned Royal Decree of 15 July 2011, all the tender amounts shall be written in full in the tendering form. BIPT also requires that those amounts be written in numbers.

Besides, BIPT asks that the applicable VAT rate and the amounts calculated after applying this VAT rate be indicated in the tendering offer as well.

9.2. Period of validity of the tender

Tenderers shall remain bound to their tenders for a period of ninety (90) calendar days, starting from the day following the opening of the tenders.

9.3. Samples, documents and certificates to be added to the tender

Tenderers shall add the following to their tenders:

- all documents asked for within the framework of the selection criteria and award criteria (see section 12 below);
- the articles of association and any other useful documents proving the signer's or signers' authority.

10. Price

10.1. Price

All prices mentioned in the tender form shall be expressed in EURO.
This is a contract based on a fixed overall price.

The contractor is deemed to have included in his prices all possible costs weighing on the requested services, also specifying the prices including VAT.

10.2. Price adjustment

No clause for price adjustment applies to this contract.

11. Liability of the service provider

The service provider commits itself to providing the services with the highest degree of professionalism.

The service provider shall bear full responsibility for the errors and shortcomings occurring in the services provided as to this professional quality standard, especially in reports he submitted for the implementation of the task.

The service provider shall also protect the contracting authority against any compensation the latter has to pay on account of the delay incurred during the execution of the services or due to the service provider's failing.

12. Selection criteria – Regularity of tenders - Award criteria

The tenderers are evaluated based on the right of access and the following qualitative selection criteria.

Only the tenders of tenderers fulfilling the right of access and the qualitative selection criteria shall be taken into account to participate in the comparison of the tenders based on the award criteria referred to in section 12.3 of these specifications, provided the tenders submitted are regular formally and materially.

In a first phase, the tenders submitted shall be examined as to their formal and material regularity. To the extent permitted by Article 95 of the RD of 15 July 2011, irregular tenders may be regularised (if this is possible in accordance with the principle of equality) or rejected.

In a second phase, the formally and materially regular tenders shall be examined as regards content by an Evaluation Committee.

This examination shall be carried out based on the award criteria mentioned in these specifications.

12.1. Right of access

By tendering the tenderer declares not to fall under one of the causes for exclusion stated below. The contracting authority shall examine the correctness of this implicit statement on his word of honour as for the tenderer whose tender is classified best. To that end it will ask the tenderer involved to provide through the fastest means and within the period it indicates, the information or documents that make it possible to verify his personal situation. Any information or documents the contracting authority is able to retrieve from the data manager for free through electronic means, will be retrieved by the contracting authority itself.

First exclusion criterion

§ 1. Belgian tenderers employing staff that is subject to the Act of 27 June 1969 reviewing the Decree having force of law of 28 December 1944 on social security of workers shall fulfil their obligations to the social security government department. They are considered to

comply with the obligations mentioned above, if it is shown that not later than the day before the deadline set for receiving the tenders:

- 1° they have sent all necessary declarations to the social security government department, including those relating to the last calendar quarter but one that has passed before the deadline for the reception of the tenders and
- 2° no contributions of more than 3,000 EURO are due on these declarations, unless they have been granted a postponement of payment for this debt, the instalments of which are strictly observed.

However, even if the contribution debt exceeds 3,000.00 euro, tenderers shall be deemed to satisfy the requirements, if they show before the decision to award the contract is taken, that not later than at the end of the calendar quarter referred to in the second subsection, they have one or more claims on a contracting authority as referred to in Article 2, 1° of the Act of 15 June 2006 or on a public company as referred to in Article 2, 2° of the Act of 15 June 2006 which are certain, due and uncommitted to third parties and the amount of which is at least equal to the overdue contributions, but for 3,000.00 euro.

§ 2. At the latest the day before the deadline set for the reception of the tenders, *foreign tenderers* are under the obligation to:

- 1° have fulfilled the obligations regarding payment of social security contributions, in accordance with the legal provisions prevailing in the country of residence;
- 2° have complied with the provisions of paragraph 1, if they employ staff that is subject to the Act of 27 June 1969 reviewing the Decree having force of law of 28 December 1944 on social security of workers.

§ 3. In addition, the contracting authority is allowed, at any stage of the procedure, to gather information from any tenderer with all means it deems useful about the situation of payment of social security contributions.

Second exclusion criterion

Under Article 20 of the Act of 15 June 2006 and Article 61, § 1 of the Royal Decree of 15 July 2011, in each stage of the procedure, access to the contract shall be denied to a tenderer who, by a court ruling having force of res judicata which the contracting authority is aware of, has been convicted for:

- 1° participation in a criminal organisation in the sense of Article 324bis of the Penal Code;
- 2° bribery, as defined in Article 246 of the Penal Code;
- 3° fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests, approved by the Act of 17 February 2002;
- 4° money laundering as referred to in Article 3 of the Act of 11 January 1993 for the prevention of the use of the financial system for the purpose of money laundering and terrorism financing.

With a view to implementing this paragraph, the contracting authority is entitled to ask tenderers to submit the necessary information or documents. When in doubts about the personal situation of those candidates or tenderers, it can ask the competent Belgian or foreign authorities for the information it deems necessary for that purpose.

Third exclusion criterion

Under Article 20 of the Act and Article 61, § 2, 1° and 2° of the Royal Decree of 15 July 2011, in each stage of the award procedure, access to the contract can be denied to a tenderer who:

1° is in a state of bankruptcy or liquidation, discontinuation of one's business activities or judicial reorganisation, or in a corresponding situation resulting from a similar procedure existing in other national regulations;

2° has confessed its bankruptcy or is involved in a liquidation procedure, a judicial reorganisation or any similar procedures existing in other national regulations.

Fourth exclusion criterion

Shall be excluded from the participation in the public procurement, the tenderer who has been convicted by a court ruling having force of res judicata for an offence affecting his professional integrity.

Fifth exclusion criterion

The tenderer shall not be guilty of grave professional misconduct proven by any means, which the contracting authority can justify.

Moreover, by signing his tender, the tenderer commits himself to complying with the standards set out in the fundamental conventions of the International Labour Organisation (ILO), in particular:

1. the ban on forced labour (Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105));
2. the right to trade union freedom (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87));
3. the right to organisation and collective bargaining (Organise and Collective Bargaining Convention, 1949 (No. 98));
4. the ban on discrimination regarding employment and remuneration (Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111));
5. the minimum age for child labour (Minimum Age Convention, 1973 (No. 138), as well as the worst forms of child labour (Worst Forms of Child Labour Convention, 1999 (No. 182)).

The non-observance of the aforementioned conventions shall therefore be considered as a grave professional misconduct within the meaning of Article 61, § 2, 4° of the RD of 15 July 2006. The aforementioned provisions shall be without prejudice to the other provisions included in Article 61 of the aforementioned Decree.

Sixth exclusion criterion

The tenderer shall fulfil his obligations regarding payment of his taxes under the Belgian legislation or the legislation of his country of residence, in accordance with the provisions laid down in Article 63 of the RD of 15 July 2011.

Seventh exclusion criterion

Shall be excluded from the participation in the public procurement, the tenderer who is guilty of serious misrepresentation when providing information required under this chapter, or who has failed to provide this information.

12.2. Selection criteria regarding the tenderers' technical capability

First criterion

The tenderer shall have enough sufficiently qualified employees at his disposal to carry out the contract properly.

To that end, the tenderer shall add to his tender a list of the employees who will be involved in the execution of the contract. In this document, the tenderer shall mention the degrees held by those employees, as well as their professional qualifications and experience.

His structural and financial capacity, his commitment and availability, or the absence of a conflict of interests in the eyes of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors, shall also be taken into account.

A word of honour confirming the tenderer's independence from any natural or legal person subjected to the control of the Institute, shall be added to the tender in accordance with Article 16 of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors.

Second criterion

The tenderer shall provide references for services provided in the past three years in the area of expertise of this contract.

The tenderer shall add to his tender a list of the main accomplishments of the past three years, mentioning the amount, the date and the private or public customers concerned. The services are proven by certificates issued or co-signed by the competent authority or, in case of a private customer, by a certificate from that person or for lack thereof, by a simple statement from the service provider.

12.3. Award criteria

For the choice of the economically most interesting tender, the regular tenders of the tenderers selected shall be tested against a number of award criteria.

These criteria will be weighted in order to obtain a final ranking.

12.3.1. List of award criteria

In descending order of importance, the award criteria are the following:

- | |
|---|
| <ol style="list-style-type: none">1. Price (60%)2. Methodology (40%) |
|---|

Award criteria will be evaluated as follows:

- 1. Award criterion 1 (price) will be evaluated based on the following formula:

$$\text{Points} = 60 - \left(60 \times \frac{P_x - P_1}{P_1} \right)$$

Where P_x stands for the fixed overall price given by the tenderer who has submitted the tender considered and P_1 stands for the fixed overall price given by the tenderer who has offered the lowest price.

- 2. Award criterion 2 (methodology) will be evaluated based on a document of maximum 15 pages (referring to other documents or tools if needed) describing the process that the tenderer will develop to carry out the work required efficiently.

12.3.2. Final score

The scores for the award criteria will be added up. The contract will be awarded to the tenderer with the highest final score, after the contracting authority will have verified the truth of that tenderer's implicit statement on his word of honour and provided that this verification proves that the implicit statement on the tenderer's word of honour corresponds with reality.

If the tenderer gets less than half of the maximum points that can be assigned for a criterion, he shall be excluded. Therefore, he shall not be tested against the other criteria.

13. Security

The security is set at 5% of the total amount, exclusive of VAT, of the contract. The amount thus obtained is rounded up to the nearest ten euro.

In accordance with the legal and regulatory provisions the security can be provided either in cash or public funds, or as a common security.

The security can also be provided by means of a guarantee provided by a credit institution that meets the legal requirements regarding the status and monitoring of credit institutions or by an insurance company that meets the legal requirements regarding the control of insurance companies and which is admitted under section 15 (security).

Within thirty calendar days following the day when the contract is concluded, the supplier must offer proof that he or a third party has provided the security in one of the following ways:

1. when a security is given in cash, through payment of the amount into the Girobank account of the "Caisse des Dépôts et Consignations" [bpost bank account number BE58 6792 0040 9979 (IBAN) PCHQBEBB (BIC)] or of a public body fulfilling a function similar to that of the aforementioned "Caisse", called hereafter "public body fulfilling a similar function";
2. when the security consists of public funds, by depositing these for account of the "Caisse des Dépôts et Consignations" in the hands of the national treasurer (caissier de l'État) in the headquarters of the National Bank of Brussels or in one of its provincial branches or of a public body fulfilling a similar function;
3. when the security is covered by a common security company, by depositing through a body that carries out this activity legally, of a deed of joint security at the "Caisse des Dépôts et Consignations" or at a public body fulfilling a similar function;
4. when the security is provided by means of a guarantee, through the commitment deed of the credit institution or of the insurance company.

Depending on the case, this proof can be provided by submitting to the contracting authority:

1. either the receipt of the "Caisse des Dépôts et Consignations" or of a public body fulfilling a similar function;
2. or the debit statement of the credit institution or of the insurance company;
3. or the deposit statement of the national treasurer or of a public body fulfilling a similar function;
4. or the original deed of joint security, initialed by the "Caisse des Dépôts et Consignations" or a public body fulfilling a similar function;
5. or the original copy of the commitment deed drawn up by the credit institution or the insurance company that has granted a guarantee.

These documents, signed by the depositor, state for which the security has been provided and the precise destination, consisting of the succinct indication of the subject of the contract and reference to the contract documents, as well as the name, first names and full address of the contractor and those of the third party, if any, having made the deposit on behalf of the contractor, with the indication "financier" or "proxy", as the case may be.

The period of thirty calendar days mentioned above is suspended during the time of closure of the service provider's company for paid annual holidays and compensatory time off, which have been fixed according to the regulations or in a generally binding collective agreement.

The proof of security must be sent to the address that will be mentioned in the notification of the conclusion of the contract.

The contractor's request to start the delivery:

1. in case of provisional delivery: replaces the request to release the first half of the security;
2. in case of final delivery: replaces the request to release either the second half, or the whole of the security, depending on whether there was a provisional delivery or not.

14. Receipt

The services will be followed closely by a representative of the contracting authority during their execution. The identity of this representative will be communicated to the service provider when the performance of the services will start.

15. Execution of the services

15.1. Deadlines and clauses

15.1.1 Deadlines

The services will be executed as much as possible in accordance with the planning indicated in the technical part of these specifications, from the date following the day when the service provider has received the notice of the contract award and until BIPT estimates that the contract has been carried out completely.

As a reminder, the implementation time is a contract award criterion which could thus modify the expected planning included in these specifications.

15.1.2. Implementing condition

The tenderer shall commit himself to complying with the 8 fundamental ILO conventions during the full execution of the contract and especially with:

1. the ban on forced labour (Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105));
2. the right to trade union freedom (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87));
3. the right to organisation and collective bargaining (Organise and Collective Bargaining Convention, 1949 (No. 98));
4. the ban on discrimination regarding employment and remuneration (Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111));
5. the minimum age for child labour (Minimum Age Convention, 1973 (No. 138), as well as the worst forms of child labour (Worst Forms of Child Labour Convention, 1999 (No. 182)).

Based on Article 44, § 1, 1° of the Royal Decree of 14 January 2013, not honouring that commitment shall be considered as non-execution of the contract according to the provisions of the contract documents, which will lead to notice being served upon the contractor and may, based on article 47, § 2, 1° of the Royal Decree of 14 January 2013, lead to the implementation of the measures ex officio, especially the unilateral termination of the contract.

15.2. Place where the services are to be executed and formalities

15.2.1. Place where the services are to be executed

The services will be performed at the following address:

- in the tenderer's offices;
- in the BIPT offices – Ellipse Building, Boulevard du Roi Albert II 35, 1030 Brussels, as regards the meetings attended by BIPT.

15.2.2. Evaluation of the services performed

If abnormalities are observed during the service provision, the contractor will immediately be informed by a fax or an e-mail, which will later be confirmed by a registered letter. Services not provided according to the rules will have to be recommenced by the contractor.

16. Invoicing and payment of the services

Once the task is completed, the contractor sends his invoice (in a single copy) to the following address:

BIPT
For the attention of Mr Luc Vanfleteren
Ellipse building
Boulevard du Roi Albert II 35
1030 Brussels

Only services duly provided may be invoiced.

The contracting authority has a thirty day period for verification counting from the day of termination of the services, set in accordance with the formalities laid down in the contract documents, in order to complete the formalities regarding technical acceptance and provisional delivery and to notify the service provider of the result.

The amount due to the service provider is to be paid within the thirty day time of payment counting from the expiration of the period for verification or counting from the day following the last day of the period for verification, if that is less than thirty days. When the contract documents do not provide for a separate claim, the invoice has the value of a claim.

When the contract documents do not provide for a separate claim, the invoice has the value of a claim.

The invoice is to be issued in EURO.

17. Notices and rectifications

The notices and rectifications announced or published in the "Bulletin des Adjudications", as well as the notices and rectifications relating to this contract are fully part of these specifications. The tenderer is deemed to have read them and to have taken them into account when drawing up his tender.

18. Special commitments for the service provider

The service provider and his employees are bound by a duty of secrecy regarding the information of which they are aware when executing this contract. This information can by no means be disclosed to third parties without the written consent of the contracting authority. However, the service provider may mention this contract as a reference.

The service provider commits himself to having the contract carried out by the persons mentioned in the tender, except in cases of force majeure. The persons mentioned or their substitutes are all expected to participate effectively in the fulfilment of the contract. Substitutes have to be approved by the contracting authority.

19. Disputes

This contract is governed by Belgian law.

Any disputes regarding the execution of this contract are settled exclusively by the competent courts of the Brussels court district. The official language is French or Dutch.

The contracting authority can by no means be held accountable for any damage caused to persons or goods resulting directly or indirectly from the activities that are necessary to carry out this contract. The contractor protects the contracting authority from any claim for compensation from third parties in this context.

20. Intellectual property rights

If there are licence fees, copyrights and patent rights to be paid, the latter shall be part of the price bid and the methods and/or products used may not give rise to periodic payments.

Tenderers shall clearly indicate in their tenders which products and/or methods are concerned by the licence fees, copyrights or patent rights, and whether such rights may justify restrictions on the use of the documents produced and the methodology taught.

All the documents and files provided by the beneficiary to the contracting authority within the context of the execution of this contract, become the property of the latter.

ANNEX A - Description of the services

1 Context

BIPT is the Belgian authority in charge of regulating the electronic communications markets that are not effectively competitive.

Within this framework, BIPT can impose measures intended to control wholesale prices (and possibly retail prices) in accordance with the current regulatory framework. At the European level, it concerns Directive 2002/21/EC (Framework Directive)¹ and Directive 2002/19/CE (Access Directive)². At the Belgian level, it concerns the Act of 13 June 2005 on electronic communications and the Act of 30 March 1995 on distribution networks for broadcasting and the audio-visual media services in the bilingual region of Brussels-Capital.

Price squeeze (also called "margin squeeze") may appear when a vertically integrated company sets a gap between the price of its wholesale services and the price of its retail services that is insufficient to cover the costs specific to the retail market.

In 2007, BIPT had adopted [guidelines for the evaluation of price squeeze](#)³.

BIPT wishes to adopt new guidelines in the light of the developments that have taken place since then in this domain.

BIPT also wishes to equip itself with a computer tool meant to help with the detection of possible price squeeze practices by SMP operators.

As part of his contract, the selected tenderer will have access, in the strictest confidentiality, to the models previously developed for BIPT. He will have the possibility to rely on BIPT's competences to obtain all the useful information from operators.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive") (OJ. L 108 of 24.4.2002, p.33).

² Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ("Access Directive") (OJ L 108 of 24.4.2002, p. 7);

³ See <http://www.bipt.be/fr/operateurs/telecom/marches/controle-des-prix-et-des-couts/controle-des-prix-de-detail/decision-de-ltmibpt-du-11-juil>

Details of the contract

2.1 Drawing up of new guidelines

The selected tenderer shall write new guidelines, taking into account the remedies currently imposed and recent developments in this matter, including:

- the decisions adopted by the General Court or by the European Court of Justice, for example in the cases Telefónica (T-336/07), Deutsche Telekom (C-280/08P) and TeliaSonera (C-52/09);
- the recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment; Annex II to this recommendation determines the framework of an *ex ante* economic replicability test;
- BEREC's works on the subject⁴.

Those new guidelines shall take into account the fact that the bundled offers phenomenon raises new methodological questions.

BIPT aims to achieve clear and concrete guidelines that comply with the above-mentioned developments.

2.2 Development of a tool to assist the detection of price squeeze practices

The selected tenderer shall develop a computer tool which makes it possible to translate the guidelines into concrete calculations. To that end, the tenderer shall define the data to be collected from operators and shall introduce them into the tool.

The computer tool shall:

1. allow the easy comparison of wholesale prices on the one hand, and of retail prices and relevant costs on the other, in order to draw conclusions regarding the possible existence of price squeeze;
2. allow, in particular, to assess the economic replicability of "multiple play" offers, as defined in Annex II to the Recommendation of 11 September 2013;
3. allow to carry out the analyses mentioned under points 1 and 2 above for the offers of the different SMP operators in Belgium.
 - Belgacom's BROBA and WBA offers;
 - TV and "Dual Play" wholesale offers (TV + broadband) of cable operators Telenet, Brutélé and Tecteo⁵
 - Belgacom's "Next Generation Leased Lines" wholesale offers⁶.

⁴ BEREC Guidance on the regulatory accounting approach to the economic replicability test (i.e. *ex-ante*/sector specific margin squeeze tests), 5 December 2014.

⁵ Brutélé and Belgacom operate on the market under the common brand VOO.

The computer tool shall be in Microsoft Excel format (one or more files) or compatible with this format. It shall be delivered in 2 versions:

- a full version that can be used by BIPT and that is able to contain all of the inputs and calculations, including confidential data;
- a version without confidential data (if needed, by changing confidential data into ranges or fictitious data) which can be published on the Internet if necessary⁷.

The tool shall be user-friendly. For instance, it shall differentiate between confidential and non-confidential data, and differentiate cells in which data can be introduced, while data and cells which cannot be modified shall be protected. If needed, its use shall be made easier through the presence of pop-ups.

2.3 Treatment of the answers to the public consultation

The new guidelines and the computer tool shall be submitted for public consultation.

The selected tenderer shall:

- draw up a summary of the comments made during the public consultation;
- analyse these comments together with BIPT;
- make recommendations taking these comments into account;
- modify the guidelines and the computer tool accordingly, in agreement with BIPT.

Implementation time

The drawing up of the guidelines should be completed 3 months after the award of the contract.

The development of a supporting computer tool should be completed 5 months after the award of the contract.

The processing of the national consultation should be completed 8 months after the award of the contract.

The finalisation of the tool and the documents should be completed 9 months after the award of the contract.

⁶ A "Next Generation Leased Line" (NGLL) consists of a transport section and/or of one or two local sections. The transport section ("E-line") is based on the Carrier Ethernet technology or Ethernet MPLS technology (MultiProtocol Label Switching). NGLLs are mainly used to support VPNs (Virtual Private Networks).

⁷ By way of example, see the Excel files published by the Dutch operator KPN: <https://www.kpn-wholesale.com/nl/service/regulatory-documenten/nd5-toetsen-2012-2014/nd5-modellen.aspx>.

4 Reports, communication of results and transfer of know-how to BIPT

For all the tasks described in these specifications, the selected tenderer shall participate, with qualified and competent representatives, in any working meeting convened by BIPT. The tenderer shall also make himself available for any working meetings with CRC members⁸.

A follow-up meeting or a telephone call must be organised at regular intervals (at least twice a month) or at the request of BIPT. These regular contacts with the BIPT services should allow to explain in detail the progress of the project.

Each month, the selected tenderer shall send to BIPT a progress report of his mission detailing the tasks carried out during the month in question and the number of man-days worked to accomplish these tasks.

The tenderer will provide:

- A document written in French, Dutch or English, with the new guidelines. This document must be sufficient to form the basis of the decisions that the regulator could take concerning price squeeze.
- A computerised version of the computer tool in French, Dutch or English, accompanied, if need be, by all the files and/or data bases required for its operation;
- A version of this computer tool could be made public.

Assistance concerning the problems and subjects dealt with in these specifications (included in case of appeal against a CRC or BIPT decision relating to it) shall be provided by the co-workers of the project upon simple telephone request during or after the realisation of this assignment through audio conference or, if needed, on the spot within 24 hours. This assistance is included in the price of the assignment, is guaranteed explicitly under those terms and must not entail any extra charges.

⁸ Conference of Regulators of the electronic communications sector (body associating BIPT and regulators that are competent as regards broadcasting).

ANNEX B. Tendering form

TENDERING FORM

Belgian Institute for Postal Services and Telecommunications (BIPT)
Boulevard du Roi Albert II, 35
1030 Brussels

SPECIFICATIONS NO 2015/MARKET/PRICE SQUEEZE

GENERAL CALL FOR TENDERS WITH EUROPEAN PUBLICITY FOR THE ACCOUNT OF THE BELGIAN INSTITUTE FOR POSTAL SERVICES AND TELECOMMUNICATIONS (BIPT) REGARDING THE DESIGNATION OF A BODY TASKED WITH THE DEVELOPMENT OF A PRICE SQUEEZE TESTING TOOL

The company or natural person

(full name)

situated at the following **address**:

(street)
(postal code and municipality)
(country)

registered at the **Crossroads Bank for Enterprises** with the following number

--

and for which **Mr/Mrs (*)**

(name)
(position)

domiciled at the following address:

	(street)
	(postal code and municipality)
	(country)

acts and signs below as the **tenderer or proxy, commits itself to executing under the terms and provisions of SPECIFICATIONS NO 2015/MARKET/PRICE SQUEEZE** the service described above, **constituting the ONLY LOT of this document, at the unit prices mentioned below:**

Fixed overall price

[in letters and in numbers in EURO]

to which the VAT must be added, amounting to:

[in letters and in numbers in EURO]

resulting in an overall amount including VAT of:

[in letters and in numbers in EURO]

Any confidential information and/or information relating to technical or trade secrets shall be marked clearly in the tender.

The contracting authority's financial institution shall pay the sums due by deposit into or transfer to

the **account number:**

IBAN

BIC

For the interpretation of the contract the

Dutch/French (*)

language is chosen.

Any correspondence regarding the execution of the contract shall be sent to:

(street)

(postal code and municipality)

(☎ and F number)

(e-mail address)

Done:	In	On	201.
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The tenderer or authorised representative:

	(name)
	(position)
	(signature)

APPROVED,

REMINDER: DOCUMENTS THAT MUST BE ANNEXED TO THE TENDER:

- **All documents and information asked within the framework of the selection and allocation criteria;**

Please do not forget to number all pages of your tender, inventory and annexes continuously.